

105 CMR 157.000: THE REGISTRATION AND OPERATION OF TEMPORARY NURSING
SERVICE AGENCIES

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157.001: Purpose

The purpose of 105 CMR 157.000 is to provide standards for the registration and operation of temporary nursing service agencies to enable the Rate Setting Commission to establish reasonable rates of payment for services provided by registered temporary nursing service agencies.

157.002: Authority

105 CMR 157.000 is adopted under authority of M.G.L. c. 111, § 72Y

157.003: Citation

105 CMR 157.000 shall be known and may be cited as 105 CMR 157.000: *The Registration and Operation of Temporary Nursing Service Agencies*.

157.010: Scope and Applicability

105 CMR 157.000 applies to all temporary nursing service agencies required to be registered pursuant to M.G.L. c. 111, § 72Y.

157.020: Definitions

The following terms as used in 105 CMR 157.000 shall be interpreted as follows unless the context or subject matter clearly requires a different interpretation:

Administrator shall mean a person qualified by training, education or experience to operate a temporary nursing service agency.

Commissioner shall mean the Commissioner of Public Health or his or her designee.

Department shall mean the Department of Public Health.

Health Care Facility shall mean a hospital, institution for the care of unwed mothers or clinic, as defined in M.G.L. c. 111, § 52; a long-term facility which is an infirmary maintained in a town; a convalescent or nursing home, a rest home or a charitable home for the aged, as defined in M.G.L. c. 111D, § 71; a clinical laboratory subject to licensing under M.G.L. c. 111D; a public medical institution, which is any medical institution, and, after December 1, 1972, any institution, for the mentally ill or retarded, supported in whole or in part by public funds, staffed by professional, medical and nursing personnel and providing medical care, in accordance with standards established through licensing, approval or certification for participation in programs administered under Titles XVIII and XIX of the Federal Social Security Act, by the Department of Public Health; and any part of such facilities; provided, however, that "health care facility" shall not include a facility operated by a religious group relying solely on spiritual means through prayer and healing and in which health care by or under the supervision of doctors of medicine, osteopathy, or dentistry is not provided.

Medical Personnel shall mean nurses, nursing assistants, nurses' aides, and orderlies.

Nurse shall mean a licensed practical nurse or a registered nurse as defined by the Board of Registration in Nursing (M.G.L. c. 112, §§ 74 through 81C).

Nursing Assistant, Nurses' Aide, and Orderly shall mean any individual who provides nursing care under the supervision of a nurse.

Temporary Nursing Service Agency (TNSA) also referred to as "Nursing Pool" in M.G.L. c. 111, § 72Y, shall mean any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for medical personnel. "Temporary Nursing Service Agency" shall not include a medical personnel staff arrangement set up by a health care facility solely for its own use where the only costs are the salaries paid to such medical personnel; or an individual who only engages in providing his or her own services on a temporary basis to health care facilities.

Transfer of Ownership shall mean a transfer of a majority interest in the ownership of a temporary nursing service agency.

157.100: Registration Required

Any person who operates a temporary nursing service agency shall register the agency with the Commissioner. Each separate location of the business of a temporary nursing service agency shall have a separate registration.

157.110: Application for Initial Registration

(A) Any person operating a temporary nursing service agency on September 23, 1988, shall submit an application on a form prescribed by the Commissioner, by October 12, 1988, for registration of such pool at each of its separate locations.

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(B) Any person initiating operation of a temporary nursing service agency or separate location thereof after September 23, 1988 shall submit an application prior to the commencement of operations.

(C) Every application shall be notarized and signed under the pains and penalties of perjury by the applicant or applicants and shall include any information required by the Commissioner as part of the application package.

157.120: Application for Renewal Registration or Change of Location

(A) Application for renewal registration shall be filed at least 30 days before the expiration of the previous registration.

(B) An application for a change of existing location shall be filed within two business days of the change and shall be treated as a renewal application.

157.130: Transfer of Ownership

In the case of a transfer of ownership, the new owner shall file an application for initial registration within two business days of the transfer.

(A) The fee for a transfer of ownership shall be \$250.00 for a single location plus \$100.00 for each additional separate location.

(B) The fee for a change of location shall be \$100.00 for each location.

157.140: Registration Fee

A registration fee shall accompany each application for initial or renewal registration. The fee shall be \$750.00 for a single location, plus \$300.00 for each additional separate location operated by the temporary nursing service agency.

157.150: Evaluation of Application

The Commissioner shall not approve an application for initial or renewal registration unless the application is substantially complete and indicates compliance with 105 CMR 157.000.

157.160: Registration

Upon approval of the application, the Commissioner shall register the temporary nursing service agency at each location for a period of two years subject to renewal. The registration shall not be transferable. The registrant shall assure compliance with 105 CMR 157.000. An application filed in accordance with the provisions of 105 CMR 157.110(A), 157.120 or 157.130 shall have the effect of a registration until the application is acted upon by the Commissioner.

157.170: Denial, Revocation and Refusal to Renew Registration

(A) A registration may be denied, revoked or refused renewal for cause which includes, but need not be limited to, any of the following:

- (1) Failure to submit the required registration fee.
- (2) Violation of any state statute pertaining to regulation of temporary nursing service agencies.
- (3) Failure to comply with Rate Setting Commission's reporting requirements.
- (4) Having outstanding fines owing to the Rate Setting Commission, or otherwise violating 114.3 CMR 45.00.
- (5) Violation of any applicable provision of 105 CMR 157.000.

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(B) Whenever the Commissioner denies an application for initial registration or determines that a registration should be revoked or refused renewal, the Commissioner shall provide written notice thereof to the applicant or registrant.

(C) Within 21 days after receipt of notice that an application for initial registration has been denied or a determination that a registration should be revoked or refused renewal, the applicant or registrant may appeal such action by filing a Notice of Claim for an Adjudicatory Proceeding pursuant to 801 CMR 1.00 *et seq.*

(D) The decision of a hearing officer in any adjudicatory proceeding conducted under this section shall be reviewed by the Commissioner and his or her decision upon this review shall constitute final agency action.

(E) Notwithstanding anything herein to the contrary, no registration may be revoked or refused renewal until there has been final agency action pursuant to 105 CMR 157.170(D), except where the Commissioner makes an initial determination requiring immediate agency action during any pending appeal and has so notified the registrant in writing pursuant to 105 CMR 157.170(B).

157.200: Administrator

(A) The temporary nursing service agency, at each separate location thereof, shall have an administrator qualified by training, experience or education to operate the temporary nursing service agency.

(B) The administrator shall have the following responsibilities:

- (1) contracting the services of the agency to health care facilities;
- (2) verifying that persons assigned through the agency meet the requirements of 105 CMR 157.300;
- (3) assigning staff in conformance with 105 CMR 157.400;
- (4) evaluating the performance of personnel in conformance with 105 CMR 157.500; and
- (5) reporting as required under 105 CMR 157.600.

157.210: Hours of Operation

The temporary nursing service agency shall maintain hours of operation at each of its locations sufficient to meet the obligations under the written agreements with health care facilities.

157.220: Written Agreements

(A) Temporary nursing service agencies shall provide the services of medical personnel to health care facilities only under the terms of a written agreement with the facility.

(B) Written agreements shall include the following at a minimum:

- (1) types and qualifications of medical personnel available for assignment through the temporary nursing service agency;
- (2) any requirement for minimum advance notice in order to assure prompt arrival of assigned personnel;
- (3) fees established by the Rate Setting Commission pursuant to M.G.L. c. 111, § 72Y;
- (4) procedures for investigation and resolution of complaints about the performance of personnel assigned through the agency including interviews with personnel;
- (5) procedures for notice from health care facilities of failure of personnel to report to assignments and for back-up staff in such instances; and
- (6) procedures for notice of actual or suspected abuse, theft, tampering or other diversion of controlled substances by temporary nursing service personnel. Such procedures shall include:

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- (a) The administrator of the health care facility, or his/her designee, shall immediately notify by telephone the Department of Public Health, Division of Food and Drugs, of the suspected drug abuse, theft, tampering or other diversion upon discovery.
- (b) A "Report of Theft of Controlled Substances" (DEA 106 Form), if applicable, or a written report of the suspected incident(s) shall be submitted by the administrator or his/her designee of the health care facility to the Division of Food and Drugs within seven days. Whenever a TNSA employee had access to the drugs, the administrator of the health care facility shall also send a copy of the report to the TNSA for filing in the personnel record of the TNSA employee, unless the facility administrator has reason to believe the TNSA employee was not involved in the incident;
- (7) a program for monitoring the quality of agency performance which may include questionnaires or other survey of health care facilities with which the nursing pool has written agreements;
- (8) the requirements of written agreements as stated in 114.3 CMR 45.00, Rate Setting Commission regulations on Temporary Nursing Services.

157.300: Current Registration, License or Certification

The temporary nursing service agency shall establish policies and procedures to verify that all medical personnel maintain current licenses, registrations or certifications as applicable.

157.310: Pre-Employment Physical and Testing for Communicable Disease

The temporary nursing service agency shall establish policies and procedures to verify that all assigned personnel have undergone pre-employment physicals and testing for communicable diseases required by the health care facility prior to assignment.

157.320: Personnel Records

The temporary nursing service agency shall maintain a record for each of the medical personnel it assigns to health care facilities. Such record shall include:

- (1) evidence of current registrations, professional licensure or certification as applicable;
- (2) evidence that the individual has completed pre-employment physical and testing for communicable disease as applicable;
- (3) evidence of a background or reference check;
- (4) copies of reports required under 105 CMR 157.220(B)(6)(b) and 157.600; and
- (5) copies of annual performance reviews required under 105 CMR 157.500.

157.400: Assignment Procedures

The temporary nursing service agency shall maintain written procedures for meeting health facility requests for staff, including usual minimum notice time before personnel can be assigned and procedures for back-up staff if an assignment is not fulfilled.

157.500: Personnel Performance Review

The temporary nursing service agency shall establish a procedure for annually assessing its performance of medical personnel it assigns to a health care facility, including at a minimum:

- (A) review and response to any facility complaints about agency staff;
- (B) a record of agency staff reliability in fulfilling assignments; and

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(C) policies that establish a process to conduct on-site assessments of employees placed in long-term care facilities. These reviews should be conducted periodically and on each shift for which the agency provides staff. Procedures used to evaluate temporary nursing personnel shall be consistent with Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) evaluation requirements.

157.510: Agency Performance Review

The temporary nursing service agency shall establish a procedure for annually assessing its performance under the terms of written agreements developed with facilities to which the agency assigns medical personnel. This review shall include at a minimum:

- (1) reports on complaints from contracting health care facilities and their resolution; and
- (2) record of response to requests for assignment of medical personnel to health care facilities.

157.600: Reporting Requirements

(A) Suspected Abuse, Theft, Tampering or Other Diversion of Controlled Substances.

- (1) Whenever an employee has two or more copies of form DEA 106 or another written report filed in accordance with 105 CMR 157.220(B)(6)(b) in his/her personnel file, the TNSA administrator shall file a copy of each report with the Department's Division of Food and Drugs.
- (2) Whenever the TNSA administrator has knowledge of an incident of suspected abuse, theft, tampering or other diversion of controlled substances and has reason to believe that no written report has been filed with the Department, he/she shall report the incident immediately by telephone to the Department's Division of Food and Drugs and in writing within seven days.

(B) Poor Nursing Practice. The temporary nursing service agency shall be required to refer nurses who demonstrate poor nursing practice to the Board of Registration in Nursing. Poor nursing practice shall include factors listed as grounds for complaints in the Board's regulations (244 CMR 7.07).

157.700: Department Review and Investigation

(A) All records shall be complete, accurate, current, and available on the premises of the temporary agency for inspection and maintained in a form and manner approved by the Department.

(B) The Department or its agents may visit the temporary nursing service agency to inspect the agency's records during the course of normal business hours.

(C) Records of the temporary nursing service agency are to be made available upon request by the Department or its agents.

REGULATORY AUTHORITY

105 CMR 157.000: M.G.L. c. 111, § 724.